Public Prosecutor v Muhamad Syukri bin Ishak & Ors

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEALS NOS P-06A-20–11 OF 2023, P-06A-22–11 OF 2023, P-06A-23–11 OF 2023, P-06A-24–11 OF 2023, P-06A-25–11 OF 2023, P-06A-26–11 OF 2023, P-06A-28–11 OF 2023, P-06A-29–11 OF 2023, P-06A-30–11 OF 2023, P-06A-31–11 OF 2023, P-06A-32–11 OF 2023, P-06A-33–11 OF 2023, P-06A-34–11 OF 2023, P-06A-35–11 OF 2023, P-06A-36–11 OF 2023, P-06A-37–11 OF 2023, P-06A-39–11 OF 2023, P-06A-40–11 OF 2023, P-06A-41–11 OF 2023, P-06A-42–11 OF 2023, P-06A-43–11 OF 2023, P-06A-44–11 OF 2023, P-06A-45–11 OF 2023, P-06A-46–11 OF 2023 AND P-06A-47–11 OF 2023

RAVINTHRAN, AHMAD ZAIDI IBRAHIM JJCA AND NOORIN BADARUDDIN HCJ

12 SEPTEMBER 2024

Criminal Procedure — Evidence — Proof by written statement — Prosecution's application to use witness statement of prosecution's witness under s 402B of the Criminal Procedure Code ('CPC') in place of his oral examination-in-chief was disallowed by sessions court — Whether sessions court had discretion to reject witness statement although conditions of admission were satisfied under s 402B(2) of CPC — Whether ruling of sessions court that witness statement could be used as a 'guide' contravened s 402B of CPC — Criminal Procedure Code s 402B

Criminal Procedure — Revision — Application for — Application under s 323 of Criminal Procedure Code ('CPC') — Prosecution's application to use witness statement of prosecution's witness under s 402B of the CPC in place of his oral examination-in-chief was disallowed by sessions court — Prosecution filed application for revision of sessions court's decision — High Court found nothing wrong with sessions court's decision — Whether decision of High Court was appealable — Whether ruling or order of subordinate court in the course of trial could be subject to revisionary jurisdiction of High Court before trial was concluded — Courts of Judicature Act 1964 ss 35, 50(1)(b) & 323

In the sessions court ('the SC'), the prosecution had preferred a charge under s 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) against 25 employees of the Road Transport Department based in Penang. The SC had ordered a joint trial of their cases. The prosecution had intended to use the witness statement of the fourth prosecution's witness ('SP4') under s 402B of the Criminal Procedure Code ('the CPC') in place of his oral examination-in-chief but this application was disallowed. The SC had ordered SP4 to give oral evidence in respect of his evidence in chief and for the witness statement to remain on the record merely as a 'guide' ('the SC's decision'). The

prosecution then filed an application to the High Court ('the HC') for the revision of the SC's decision under s 323 of the CPC. The learned judicial commissioner found that there was nothing wrong with the SC's decision, hence, the present appeal. The respondents in the present appeal questioned the appealability of the decision of the HC. The respondents further argued that a ruling or order of subordinate court in the course of trial could not be subject to the revisionary jurisdiction of the HC before the trial was concluded. The issue arose was whether the SC had discretion to reject the witness statement although the conditions of admission were satisfied under s 402B(2) of the CPC.

Held, allowing the public prosecutor's appeal:

(1) Under s 50(1)(b) of the Courts of Judicature Act 1964 ('the CJA'), the Court of Appeal had jurisdiction to hear any appeal from the decision of the HC made in the exercise of its revisionary jurisdiction in respect of any criminal matter decided in the SC. The prosecution requested for the ruling made by the SC in respect of the s 402B witness statement to be revised by the HC under s 323 of the CPC. In hearing the criminal revision application and deciding that the ruling of the SC was proper, the HC obviously exercised 'its revisionary jurisdiction' in 'a criminal matter decided by the Sessions Court'. In the premises, the decision of the HC squarely fell within the ambit of the abovementioned provision that governed the appellate jurisdiction of the Court of Appeal (see paras 13–14).

(2) Section 323 of the CPC envisaged that the regularity of 'any' proceedings could be the subject of a revision application. Since, 'any' was used in respect of proceedings, the court opined that it included proceedings that had not terminated with a final outcome such as conviction or acquittal. Further, it was clearly spelt out in s 35 of the CJA that the revisionary jurisdiction of the HC could be invoked 'at any stage' of the proceedings and directions could be given to the subordinate court 'for further conduct' of the proceedings. In the premises, the argument that the interlocutory rulings or orders made in the course of trial were not amenable to the criminal revisionary jurisdiction of the HC was plainly without any merit (see paras 19–20).

(3) The court opined that the word 'may' in sub-s (2) of s 402B only meant that a statement could be admitted if it satisfied the three conditions stated in paras (a), (b) and (c) and not otherwise. The governing provision in respect of the right to use a witness statement in a criminal trial was sub-s (1). It clearly said that a statement shall be admissible in evidence to the like extent as oral evidence subject to the conditions in sub-s (2). Since the conditions of admission were not an issue in this

case, in the court's view, the SC did not have any discretion to reject the witness statement of SP4 (see paras 24–25).

(4) In the scheme of s 402B of the CPC, a witness statement was to be used, if conditions of admission were met, in lieu of oral evidence in chief. There was no provision for it to be used as a 'guide'. Therefore, the ruling of the SC that the witness statement could be used as a 'guide' contravened s 402B and caused serious irregularity in the conduct of the trial (see para 25).

(5) Section 402B of the CPC was procedural in nature. It was to provide for speedy procedure. The written statement would stand as oral evidence under s 402B. However, the substantive law of evidence had not been changed by s 402B. Subsection (2) only provided for conditions of admission of the witness statement. Once admitted in lieu of oral evidence, very much like when a witness gave oral testimony, falsehoods or hearsay evidence that was contained in it needed not be necessarily accepted as true. Thus, the SC should have merely recorded the respondent's objection on leading questions and hearsay evidence. The objections should have been treated as a reservation of the respondent's right to cross-examine and challenge the witness on hearsay evidence in question and leading questions, if any. However, given the fact that the conditions of admission in s 402B(2) were satisfied, it would not do to knock out the entire statement at the initial stage when the statement was tendered in lieu of oral evidence (see paras 26–27).

[Bahasa Malaysia summary

Di mahkamah sesyen ('MS'), pihak pendakwaan telah mengenakan pertuduhan di bawah s 16(a)(B) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (Akta 694) terhadap 25 kakitangan Jabatan Pengangkutan Jalan yang berpangkalan di Pulau Pinang. Mahkamah sesyen telah mengarahkan perbicaraan bersama bagi kes-kes mereka. Pihak pendakwaan berhasrat untuk menggunakan pernyataan saksi oleh saksi pendakwaan keempat ('SP4') di bawah s 402B Kanun Tatacara Jenayah ('KTJ') sebagai ganti kepada pemeriksaan utama lisannya tetapi permohonan ini tidak dibenarkan. Mahkamah sesyen telah mengarahkan SP4 untuk memberikan keterangan lisan bagi keterangan utamanya dan supaya pernyataan saksi tersebut kekal dalam rekod semata-mata sebagai 'panduan' ('keputusan MS'). Pihak pendakwaan kemudian memfailkan permohonan kepada Mahkamah Tinggi ('MT') untuk penyemakan keputusan MS di bawah s 323 KTJ. Pesuruhjaya kehakiman yang arif mendapati bahawa tidak ada yang salah dengan keputusan MS tersebut, justeru, rayuan semasa. Responden-responden dalam rayuan ini mempersoalkan sama ada keputusan MT tersebut boleh dirayu. Responden-responden seterusnya berhujah bahawa penentuan atau perintah mahkamah rendah semasa perbicaraan tidak boleh tertakluk kepada bidang kuasa penyemakan MT sebelum perbicaraan selesai. Isu yang timbul ialah

sama ada MS mempunyai budi bicara untuk menolak pernyataan saksi tersebut walaupun syarat penerimaannya di bawah s 402B(2) KTJ telah dipenuhi.

Diputuskan, membenarkan rayuan pendakwa raya:

(1) Di bawah s 50(1)(b) Akta Mahkamah Kehakiman 1964 ('AMK'), Mahkamah Rayuan mempunyai bidang kuasa untuk mendengar apa-apa rayuan daripada keputusan MT yang dibuat dalam menjalankan bidang kuasa penyemakannya berkenaan dengan apa-apa perkara jenayah yang diputuskan oleh MS. Pihak pendakwaan memohon agar keputusan yang dibuat oleh MS berkenaan dengan pernyataan s 402B saksi disemak oleh MT di bawah s 323 KTJ. Semasa mendengar permohonan penyemakan jenayah dan memutuskan bahawa keputusan MS adalah wajar, MT jelas melaksanakan 'bidang kuasa penyemakannya' dalam 'perkara jenayah yang diputuskan oleh Mahkamah Sesyen'. Oleh yang demikian, keputusan MT tersebut adalah termasuk dalam lingkungan peruntukan yang disebut di atas yang mengawal bidang kuasa rayuan Mahkamah Rayuan (lihat perenggan 13–14).

(2) Seksyen 323 KTJ menetapkan bahawa keteraturan 'mana-mana' prosiding boleh menjadi subjek permohonan penyemakan. Oleh kerana, 'mana-mana' digunakan berkenaan dengan prosiding, mahkamah berpendapat bahawa ia termasuk prosiding yang tidak ditamatkan dengan keputusan muktamad seperti sabitan atau pembebasan. Selanjutnya, jelas dinyatakan dalam s 35 AMK bahawa bidang kuasa penyemakan MT boleh digunakan 'pada mana-mana peringkat' prosiding dan arahan boleh diberikan kepada mahkamah rendah 'tentang pengendalian selanjutnya' prosiding. Berdasarkan premis tersebut, hujah bahawa penentuan atau perintah interlokutori yang dibuat semasa perbicaraan tidak boleh tertakluk kepada bidang kuasa penyemakan jenayah MT adalah jelas tidak mempunyai apa-apa merit (lihat perenggan 19–20).

(3) Mahkamah berpendapat bahawa perkataan 'boleh' dalam sub-s (2) s 402B hanya bermaksud bahawa sesuatu pernyataan boleh diterima jika ia memenuhi tiga syarat yang dinyatakan dalam perenggan (a), (b) dan (c) dan bukan sebaliknya. Peruntukan yang mengawal berkenaan dengan hak untuk menggunakan pernyataan saksi dalam perbicaraan jenayah ialah sub-s (1). Ia dengan jelas mengatakan bahawa suatu pernyataan bertulis boleh, tertakluk pada syarat yang terkandung dalam sub-s (2), diterima sebagai keterangan pada takat yang sama dengan keterangan lisan. Memandangkan syarat penerimaan tidak menjadi isu dalam kes ini, pada pandangan mahkamah, MS tidak mempunyai budi bicara untuk menolak pernyataan saksi SP4 (lihat perenggan 24–25).

(4) Dalam skim s 402B KTJ, suatu pernyataan saksi akan digunakan, jika syarat penerimaan dipenuhi, sebagai ganti kepada keterangan utama lisan. Tidak ada peruntukan untuk ia digunakan sebagai 'panduan'. Oleh itu, keputusan MS bahawa pernyataan saksi tersebut boleh digunakan sebagai 'panduan' bercanggah dengan s 402B dan menyebabkan ketidakaturan yang serius dalam pengendalian perbicaraan (lihat perenggan 25).

(5) Seksyen 402B KTJ adalah bersifat prosedural. Ia bertujuan untuk menyediakan prosedur yang cepat. Pernyataan bertulis akan menjadi keterangan lisan di bawah s 402B. Walau bagaimanapun, undang-undang keterangan yang substantif tidak diubah oleh s 402B. Subseksyen (2) hanya memperuntukkan syarat penerimaan pernyataan saksi. Setelah diterima sebagai ganti keterangan lisan, sama seperti apabila saksi memberikan keterangan lisan, kepalsuan atau keterangan dengar cakap yang terkandung di dalamnya tidak semestinya diterima sebagai benar. Oleh itu, MS sepatutnya hanya merekodkan bantahan responden mengenai soalan memimpin dan keterangan dengar cakap. Bantahan-bantahan tersebut sepatutnya dianggap sebagai reservasi hak responden untuk memeriksa balas dan mencabar saksi mengenai keterangan dengar cakap tersebut dan soalan memimpin, jika ada. Walau bagaimanapun, memandangkan fakta bahawa syarat-syarat penerimaan dalam s 402B(2) telah dipenuhi, adalah tidak sesuai untuk mengenepikan keseluruhan pernyataan tersebut pada peringkat awal apabila pernyataan tersebut dikemukakan sebagai ganti kepada keterangan lisan (lihat perenggan 26–27).]

Cases referred to

Liaw Kwai Wah & Anor v PP [1987] 2 MLJ 69; [1987] CLJ Rep 163, SC (refd)
Manokaran & Anor v PP [1979] 1 MLJ 262 (refd)
Miss Rossarin Nuekaew v PP [2017] 5 MLJ 1; [2017] 8 CLJ 503, FC (folld)

Legislation referred to

Courts of Judicature Act 1964 ss 31, 35, 35(1), 50(1)(b)
Criminal Procedure Code ss 323, 325, 402B, 402B(1), (2), (2)(c), (6)
Malaysian Anti-Corruption Commission Act 2009 s 16(a)(B)

Appeal from: *Public Prosecutor v Rossli bin Abdullah* [2022] MLJU 3253 (High Court, Johor Bahru)

Wan Shaharuddin bin Wan Ladin (with Julaila bt Jamaludin, Maziah bt Mohaide and Nurul Atiqah bt Mohamad Alias) (Deputy Public Prosecutor, Malaysian Anti-Corruption Commission) in Criminal Appeal Nos P-06A-20–11 of 2023, P-06A-40–11 of 2023, P-06A-22–11 of 2023, P-06A-23–11 of 2023, P-06A-24–11 of 2023, P-06A-25–11 of 2023,

P-06A-26–11 of 2023, P-06A-28–11 of 2023, P-06A-29–11 of 2023, P-06A-30–11 of 2023, P-06A-31–11 of 2023, P-06A-32–11 of 2023, P-06A-33–11 of 2023, P-06A-34–11 of 2023, P-06A-35–11 of 2023, P-06A-36–11 of 2023, P-06A-37–11 of 2023, P-06A-39–11 of 2023, P-06A-41–11 of 2023, P-06A-42–11 of 2023, P-06A-43–11 of 2023, P-06A-45–11 of 2023, P-06A-44–11 of 2023 and P-06A-46–11 of 2023 and P-06A-47–11 of 2023 for the appellant.

Ang Chun Pun (with Ch'ng Gin Yee) (CP Ang & Co) in Criminal Appeal Nos P-06A-20–11 of 2023 and P-06A-40–11 of 2023 for the respondents.

Amrick Singh Sandu (with Muhammad Zulzarif bin Mohd Zakuan) (Naran Singh & Co) in Criminal Appeal Nos P-06A-22–11 of 2023, P-06A-23–11 of 2023, P-06A-24–11 of 2023, P-06A-25–11 of 2023, P-06A-26–11 of 2023, P-06A-28–11 of 2023, P-06A-29–11 of 2023, P-06A-30–11 of 2023, P-06A-32–11 of 2023, P-06A-33–11 of 2023, P-06A-34–11 of 2023, P-06A-35–11 of 2023, P-06A-36–11 of 2023, P-06A-37–11 of 2023, P-06A-39–11 of 2023, P-06A-41–11 of 2023, P-06A-44–11 of 2023 and P-06A-46–11 of 2023 for the respondents.

Ashok Athimulan (with Fiona Aurelia Culas, V Muniandy and S Gowri) (Athimulan & Co) in Criminal Appeal No P-06A-31–11 of 2023 for the respondents.

Nazmi bin Mohd Asrar (with Hafiz Zainol Abidin) (Hafiz Zabir & Rezal) in Criminal Appeal Nos P-06A-42–11 of 2023, P-06A-43–11 of 2023, P-06A-45–11 of 2023 and P-06A-47–11 of 2023 for the respondents.

Ravinthran JCA:

INTRODUCTION

[1] These appeals have come to us from the High Court that heard a criminal application in the exercise of its revisionary jurisdiction under s 323 of the Criminal Procedure Code ('the CPC'). The criminal application was filed by the public prosecutor to revise a ruling made by the sessions court in the course of a criminal trial. Aggrieved by the decision of the High Court to dismiss the application, the public prosecutor has filed this appeal.

BACKGROUND FACTS

[2] The brief background facts may be stated as follows. The prosecution preferred a charge under s 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) against 25 employees of the Road Transport Department based in Penang. The sessions court ordered a joint trial of their cases.

[3] When the fourth prosecution witness (SP4) was called to the witness stand, an issue pertaining to his witness statement arose. The prosecution had

provided a copy of the lengthy witness statement of 196 pages to all defence counsel more than 14 days earlier to comply with s 402B(2)(c) of the CPC. The prosecution intended to use the witness statement of SP4 under s 402B of the CPC in place of his oral examination-in-chief. However, some of the counsel for the respondents raised some issues with regard to it. It must be noted that at this stage the witness statement had not been signed by the SP4 as yet in view of the objections raised.

[4] Mr CP Ang applied for the entire witness statement to be read in court aloud and not merely let the record reflect that it was read. In our view, nothing much need to be said about this request. The Federal Court in *Miss Rossarin Nuekaew v Public Prosecutor* [2017] 5 MLJ 1; [2017] 8 CLJ 503 authoritatively ruled that witness statements need not be read out aloud. The purpose of insertion of s 402B into the CPC is to ensure a speedy trial and the utility of the witness statement would be lost if a long witness statement is read aloud in its entirety. Under s 402B(6) of the CPC only portions of the statement that are directed by the court to be read aloud need to be read by the witness.

[5] However, the sessions court gave serious consideration to the objection raised by Mr Ashok Athimulan. He objected to the contents of the witness statement as it allegedly contained leading questions and hearsay statements. We say 'allegedly' as the witness statement is not in the record of appeal for our perusal. However, the deputy public prosecutor (DPP) has informed us that the witness statement is in the form of a narrative and not in question and answer format. For this reason, we fail to see the point on leading questions if such is the case. But we leave that to the trial court's consideration.

[6] After considering the objection of Mr Ashok Athimulan, the sessions court directed SP4 to give evidence orally. At the same time, he ordered the witness statement to be used as a 'guide'. In the original language, the sessions court said that 'Penyata saksi boleh dirujuk sebagai panduan'.

[7] The trial then proceeded with SP4 giving oral evidence for about an hour during which we are told that 153 questions were asked of him. However, when court resumed after lunch, the DPP asked for an adjournment to consider some issues. The DPP had also by then referred the matter to his head office. By the time of the adjourned trial date of 5 January 2023, the prosecution filed an application for revision to the High Court in respect of the decision of the sessions court to order SP4 to give oral evidence in respect of his evidence in chief and for the witness statement to remain on the record merely as a 'guide'.

[8] It appears that at the outset of the arguments before the High Court, Mr CP Ang submitted that the decision of the sessions court is not amenable to

revision under s 323 of the CPC. The learned DPP agreed that such a position was taken by Mr CP Ang.

[9] Nonetheless, the learned judicial commissioner proceeded to consider the revision application on its merits and did not dismiss it outright on the ground submitted by Mr CP Ang that the matter is not amenable to revision. The preliminary point of Mr CP Ang is not mentioned in the judgment of the learned judicial commissioner. However, since Her Ladyship proceeded to address the merits of the revision application, we take it that she had decided to overrule Mr CP Ang's preliminary point and exercise her revisionary jurisdiction to hear the complaint of the public prosecutor.

[10] The decision of the learned judicial commissioner was that there was nothing wrong with the decision of the sessions court to refuse admission of the witness statement and to order SP4 to give oral evidence with respect to the examination-in-chief and for the witness statement to be used merely as a 'guide'.

ISSUES

[11] Before us, the DPP submitted that the prosecution's right was disposed of finally as the High Court dismissed the revision application. Therefore, he may appeal against the decision of the High Court. Secondly, he submitted the ruling of the sessions court was erroneous and not in conformity with s 402B of the CPC and is therefore subject to the revisionary jurisdiction under s 323 of the CPC and that the High Court erred in not revising it.

[12] Mr CP Ang raised the same preliminary point that he raised in the High Court, ie that the ruling of the sessions court with respect to s 402B should not have been the subject of revision under s 323 of the CPC. He said it was an interlocutory order in the course of trial and the prosecution could have filed an appeal at the conclusion of the case. Mr Amrick Singh Sandhu repeated the objection of Mr Ashok Athimulan before the sessions court that the witness statement contained leading questions and hearsay evidence and that there was mala fide on the part of the prosecution as SP4 was examined orally for an hour or so by the learned DPP. On the other hand, Mr Ashok Athimulan candidly pointed out that he did not object to the witness statement at the sessions court on the ground that conditions of admission were not met under s 402B(2) of the CPC. He only objected to the contents because of the leading questions and the hearsay evidence contained in it.

APPEALABILITY OF DECISION

[13] We observed that counsel for the respondents questioned the appealability of the decision of the High Court. In our view there is plainly no merit in it. The High Court acted in its revisionary jurisdiction. It dismissed the application for revision on its merits and affirmed the rulings made by the sessions court. The High Court gave full reasons for its decision. Under s 50(1)(b) of the Courts of Judicature Act 1964 (CJA), the Court of Appeal has jurisdiction to hear any appeal from the decision of the High Court made in the exercise of its revisionary jurisdiction in respect of any criminal matter decided in the sessions court. For ease of reference we reproduce it below:

> Part III THE COURT OF APPEAL
>
> Chapter Appellate Jurisdiction — Criminal Appeals
>
> 50 Jurisdiction to hear and determine criminal appeals
>
> (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the *Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court* —
>
> (a) in the exercise of its original jurisdiction; and
>
> (b) *in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.*

[14] The prosecution requested for the ruling made by the sessions court in respect of the s 402B witness statement to be revised by the High Court under s 323 of the CPC. In hearing the criminal revision application and deciding that the ruling of the sessions court was proper, the High Court obviously exercised 'its revisionary jurisdiction' in 'a criminal matter decided by the sessions court'. In the premises, the decision of the High Court squarely falls within the ambit of the above-mentioned provision that governs the appellate jurisdiction of the Court of Appeal.

[15] In the premises, the prosecution is entitled to file this appeal and the argument that the matter decided by the High Court is not appealable cannot be countenanced.

CRIMINAL REVISIONARY JURISDICTION

[16] The criminal revisionary jurisdiction of the High Court to supervise the subordinate courts is housed in a number of statutory provisions. Section 31 of the CJA says that the High Court can exercise criminal revisionary power in accordance with the law relating to criminal procedure. Section 323 of the CPC that governs criminal procedure reads as follows:

(1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.

(2) Orders made under sections 97 and 98 are not proceedings within the meaning of this section.

[17] Section 323 read with s 325 of the CPC confers broad powers on the High Court to make various orders if it invokes its criminal revisionary jurisdiction in a proper case. In the oft quoted Supreme Court case of *Liaw Kwai Wah & Anor v Public Prosecutor* [1987] 2 MLJ 69; [1987] CLJ Rep 163, Abdul Hamid Omar CJ (Malaya), said as follows with respect to the duty of the High Court in relation to the criminal revisionary power over the subordinate courts:

> Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.
>
> The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court.

[18] Section 323 of the CPC not only refers to any 'finding, sentence or order' that is amenable to revision. It also refers to 'regularity of any proceedings of the subordinate courts'. In the instant case, we are mindful that there is no final order or sentence that terminated the proceedings in the sessions court. However, the learned DPP has complained that the sessions court did not follow the law in respect of the manner of reception of evidence that is provided in s 402B of the CPC and that this error affected the regularity of proceedings. Assuming that the law with respect to tendering of evidence was not heeded and impacted the regularity of the proceedings fundamentally, it is our view that s 323 of the CPC can be properly invoked to correct the error. We shall examine this issue on the merits below. But first, we shall dispose of an important argument raised by counsel for the respondents.

[19] It was argued that the prosecution should wait for the conclusion of the sessions court trial and raise their complaint during the appeal stage. The point canvassed is that a ruling or order of subordinate court in the course of trial cannot be subject to the revisionary jurisdiction of the High Court before the trial is concluded. We respectfully disagree with this argument for the following reasons. Firstly, as we said earlier, s 323 of the CPC envisages that the regularity of 'any' proceedings can be the subject of a revision application. Since, 'any' is used in respect of proceedings, we should think that it includes proceedings that have not terminated with a final outcome such as conviction or acquittal.

Secondly, it is clearly spelt out in s 35 of the CJA that the revisionary jurisdiction of the High Court can be invoked 'at any stage' of the proceedings and directions can be given to the subordinate court 'for further conduct' of the proceedings. Section 35 gives additional powers to the High Court in both civil and criminal matters with respect to supervisory and revisionary jurisdiction. It reads as follows:

> 35 General supervisory and revisionary jurisdiction of High Court
>
> (1) *In addition to the powers conferred on the High Court by this or any other written law*, the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts, and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, *at any stage in any matter or proceeding, whether civil or crimina*l, in any subordinate court, call for the record thereof, and may remove the same into the High Court or *may give to the subordinate court such directions as to the further conduct of the same as justice may require*.
>
> (2) Upon the High Court calling for any record as aforesaid all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court. (Emphasis added.)

[20] The power conferred by 35 of the CJA is a wider power than the power conferred in s 325 of the CPC as noted by Abdoolcader J (as he then was) in *Manokaran & Anor v Public Prosecutor* [1979] 1 MLJ 262. In the premises, the argument that the interlocutory rulings or orders made in the course of trial are not amenable to the criminal revisionary jurisdiction of the High Court is plainly without any merit. We shall now consider whether the complaint of the public prosecutor in seeking to revise the rulings of the sessions court pertaining to section 402B witness statement of SP4 has any merit.

WHETHER HIGH COURT ERRED IN NOT ALLOWING REVISION

[21] At risk of repetition, we point out again that the application of the learned DPP to tender the witness statement of SP4 to substitute for the oral examination-in-chief was disallowed although the conditions of admission were satisfied. This is the reason that the learned DPP could not proceed to ask SP4 to sign the witness statement. Furthermore, the learned sessions court judge ordered that the witness statement would remain as a 'guide'. Before us, the learned DPP has argued that the rulings of the sessions court were highly irregular and contravened the law. To appreciate this argument, we reproduce below the s 402B of the CPC in its entirety. It reads as follows:

(1) In any criminal proceedings, a written statement by any person shall, subject to the conditions contained in subsection (2), be admissible as evidence to the like extent as oral evidence to the like effect by that person. [(1) Am Act A1521:s 10]

(2) A statement may be tendered in evidence under subsection (1) if —

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief; and

(c) a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings not later than fourteen days before the commencement of the trial unless the parties otherwise agree.

(3) Notwithstanding paragraph (2)(c), a party proposing to tender a statement in evidence under subsection (1) may not serve the statement to any other parties to the proceedings where the parties to the proceedings agree before or during the proceedings that the statement shall be so tendered.

(4) If a statement proposed to be tendered in evidence under subsection (1) —

(a) is made by a person who cannot read, the statement shall be read and explained to him before he signs it and the statement shall be accompanied by a statutory declaration made under the Statutory Declarations Act 1960 [Act 13] by the person who so read the statement to the effect that it was so read and explained; or

(b) refers to any other document or object as an exhibit, the copy served on any other party to the proceedings under paragraph (2)(c) shall be accompanied by a copy of that document or by a photograph of the object and such information as may be necessary in order to enable the party on whom it is served to inspect the document or object, as the case may be, unless it is not expedient to do so.

(5) Notwithstanding that the written statement of a person may be admissible as evidence by virtue of this section —

(a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give additional evidence which may include matters which are not contained in the statement; and

(b) the maker of the statement shall attend the trial for cross-examination and re-examination, if so requested.

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court otherwise directs, be read aloud at the trial and where the Court so directs an account shall be given orally of so much of any statement as is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it was produced as an exhibit and identified in the Court by the maker of the statement.

(8) A document required by this section to be served on any person may be served —

(a) by delivering the document to the person himself or to his advocate; or

(b) in the case of a corporation, by delivering the document to the secretary or other like officer of the corporation at its registered or principal office or by sending the document by registered post addressed to the secretary or other like officer of the corporation at that office.

[22] This provision was inserted into the CPC on 31 August 2016 and took effect on 1 March 2017. As we said earlier, the Federal Court in *Rossarin Nuekaew v Public Prosecutor* observed that the purpose of s 402B was to ensure speedy procedure in criminal trials. It must be noted that the s 402B(1) says that a written statement 'shall, subject to the conditions in sub-s (2), be admissible as evidence to the like extent as oral evidence'. Thus, in certain cases where the evidence of witness could be lengthy because of reference to numerous documents and transactions, much time could be saved if the prosecution avails the procedure in s 402B.

[23] The conditions of admission of a witness statement which are stated in sub-s (2) of s 402B of the CPC are:

(a) that the witness must sign the statement;

(b) that the statement must contain a declaration that the contents are true to the best of his knowledge and belief; and

(c) that a copy of the witness statement must be served on parties to the proceedings 14 days before the trial unless otherwise agreed.

[24] The respondents or their counsel did not raise any objection to the witness statement in the sessions court on ground that the statutory conditions of admission enacted in sub-s (2) were not satisfied. Thus, the question that arises is whether the sessions court had discretion to reject the witness statement although the conditions of admission were satisfied under s 402B(2). It was pointed out that sub-s (2) starts with the words 'A statement may be tendered in evidence'. Mr Amrick Singh Sandhu submitted that the word 'may' gives discretion to the court to reject the statement. We are of the opinion that the 'may' in sub-s (2) only means that a statement can be admitted if it satisfies the three conditions stated in paras (a), (b) and (c) and not otherwise. The governing provision in respect of the right to use a witness statement in a criminal trial is sub-s (1). It clearly says that a statement shall be admissible in

evidence to the like extent as oral evidence subject to the conditions in sub-s (2). A

[25] Since, the conditions of admission are not an issue in this case, in our view, the sessions court did not have any discretion to reject the witness statement of SP4. Furthermore, despite not admitting the witness statement, the sessions court made an order that the witness statement be used as a 'guide'. In the scheme of s 402B of the CPC, a witness statement is to be used, if conditions of admission are met, in lieu of oral evidence in chief. There is no provision for it to be used as a 'guide'. Therefore, in our opinion, the ruling of the sessions court that the witness statement can be used as a 'guide' contravened s 402B and caused serious irregularity in the conduct of the trial. It could also potentially result in every single utterance of SP4 in his oral evidence being compared to the witness statement which was ordered to be used as a so-called 'guide' and become the subject of needless and endless cross-examination. B C D

[26] We observe that s 402B of the CPC is procedural in nature. It is to provide for speedy procedure as stated in *Rossarin Nuekaew v Public Prosecutor.* The written statement will stand as oral evidence under s 402B. However, the substantive law of evidence has not been changed by s 402B. Subsection (2) only provides for conditions of admission of the witness statement. Once admitted in lieu oral evidence, very much like when a witness gives oral testimony, falsehoods or hearsay evidence that is contained in it need not be necessarily accepted as true. Hearsay evidence found in the written statement, unless it comes within the accepted exceptions, can be challenged in the same manner that hearsay evidence found in oral testimony is challenged. However, given the fact that the conditions of admission in s 402B(2) were satisfied, it would not do to knock out the entire statement at the initial stage when the statement is tendered in lieu of oral evidence. E F G

[27] Thus, the sessions court should have merely recorded the objection of Mr Ashok Athimulan on leading questions and hearsay evidence. The objections should have been treated as a reservation of his client's right to cross-examine and challenge the witness on hearsay evidence in question and leading questions, if any. The witness statement should have been admitted as oral evidence as conditions of admission were satisfied. The witness statement should not have been ordered to be used as a 'guide' as there is no provision for such a use in s 402B. H I

[28] For the above reason, the request of the DPP to revise the rulings of the sessions court pertaining to the witness statement of SP4 fell within the ambit of s 323 of the CPC. Despite invoking the power to revise and hearing arguments, in our respectful view, the High Court fell into error by ruling that

the sessions court had a discretion to reject the witness statement despite the fact that the prosecution complied with conditions for admission under s 402B(2) of the CPC. The High Court also fell into error by maintaining the ruling of the sessions court that the witness statement be used as a 'guide'

CONCLUSION

[29] For the above reasons, we allow the appeal of the public prosecutor and give the following directions to the sessions court with respect to the further conduct of the trial in accordance with the power granted under s 35(1) of the CJA. SP4 is allowed to sign the witness statement upon taking the witness stand. The witness statement is to be admitted as oral examination-in-chief of the prosecution under s 402B and the oral evidence already recorded is to stand as additional oral evidence. Counsel for the respondents are to have full liberty to examine the witness on all issues pertaining to hearsay evidence and leading questions (if any) contained in the witness statement.

Public prosecutor's appeal allowed.

Reported by Dzulqarnain Ab Fatar